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EXHIBIT OR LATE FILED

Alexandra M. Wilson
Chief Policy Counsel

November 15, 1996

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW
Room 222
Washington, DC 20554

Re: CS Docket No. 96-60

Dear Mr. Caton:

On November 15, 1996, the attached letters regarding the above-referenced proceeding were hand-delivered to Chairman Hundt. Identical letters were also delivered to Commissioners Quello, Ness and Chong, as well as to Meredith Jones, Chief, Cable Services Bureau; Bill Johnson, Deputy Chief, Cable Services Bureau; Blair Levin, Chief of Staff; Jackie Chorney, Special Assistant to Chairman Hundt; Pete Belvin, Senior Advisor to Commissioner Quello; Jim Coltharp, Special Assistant to Commissioner Quello; Anita Wallgren, Special Assistant to Commissioner Ness; Jane Mago, Senior Advisor to Commissioner Chong; and Suzanne Toller, Special Assistant to Commissioner Chong.

Please communicate with the undersigned should you have any questions about this filing.

Sincerely,

Alexandra M. Wilson

Enclosures

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Alexandra M. Wilson
Chief Policy Counsel

November 14, 1996

Reed E. Hundt
Chairman
Federal Communications Commission
1919 M Street, NW
Room 814
Washington, DC 20554

Dear Chairman Hundt:

Robin Sangston of Cox Communications, Inc. and I met recently with Jackie Chorney to discuss Cox's experience with leased access programming under the Commission's existing rules. The attached letter from Pat Esser, Vice President of Advertising Sales for Cox Communications, provides further details about Cox's leased access activities.

I hope this information is useful to you in your deliberations regarding the leased access rulemaking proceeding.

Best regards.

Sincerely,

A handwritten signature in cursive script that reads "Sandy".

Alexandra M. Wilson

Enclosure

cc: Blair Levin
Jackie Chorney

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November 13, 1996

Reed E. Hundt
Chairman
Federal Communications Commission
1919 M Street, NW
Washington, DC 20554

Dear Chairman Hundt:

As you weigh the Commission's options in the cable leased access proceeding, I wanted to share with you Cox Communications, Inc.'s positive experience with leased access under existing FCC regulations.

Since April of 1993, the Commission has been using the highest implicit fee formula to determine the "maximum reasonable rates"¹ that a cable operator may charge for leased access programming. This approach has received widespread support from both cable operators and programmers alike. However, a few companies assert that the Commission's formula makes leased access both scarce and unaffordable because the maximum permitted rates are too high.

Cox's experience over the past few years belies this assertion. Roughly 75% of Cox's cable systems currently carry some leased access programming, and leasing activity has grown, not diminished, since the Commission's formula was adopted. Indeed, several of our systems (including Hampton Roads, Virginia, Myrtle Beach, South Carolina, and Pensacola, Florida) are nearing their statutory set-aside requirement. A representative sample of leased access programming on Cox cable systems as of October 1, 1996 is attached.

Significantly, leased access programming on our systems is not limited to part-time carriage. Six of the systems on the attached chart carry at least one full-time leased access channel, and four of those systems have two or more full-time leased access channels.

Moreover, Cox rarely receives complaints or concerns from leased access programmers about either our full-time or our part-time rates. Although negotiations with potential leased access programmers can sometimes be complex, issues such as the need to provide liability insurance are the complicating factor, not Cox's rates. Indeed, in Cox's experience, the critical

¹ Section 612(c)(4)(A) of the Communications Act provides that "[t]he Commission shall have the authority to (i) determine the maximum reasonable rates that a cable operator may establish . . . for commercial use of designated channel capacity . . ." This provision was enacted as part of the 1992 Cable Act.

stumbling block for potential programmers is not the cost of leasing access but the far greater cost of producing the programming and delivering it to Cox's cable system.

You may also have been told that cable operators always charge the maximum rate permitted by the Commission's formula. This is simply not the case with respect to leasing a channel full-time on a Cox cable system. It is certainly true that a lessee whose programming adds no value to the system's program package will be quoted the maximum reasonable rate, but this makes perfect economic sense. Such a programmer should pay the legal maximum, since the operator will not generate more revenues by adding the program and may actually lose subscribers and revenues as a result of the channel addition. However, in Cox's experience, it is far more often the case that the proposed leased access programming, while not nearly as valuable as programming that the system would choose itself (and thus would be willing to pay for), has some value. Consequently, Cox's cable systems frequently negotiate a rate lower than the highest implicit fee with full-time leased access programmers.

I should note that Cox does charge the highest implicit fee, pro-rated and weighted by daypart, for part-time leased access and has never received a complaint about those rates. This is because the rates are actually lower than the market-based rates charged for paid programming sold on Cox cable systems by its subsidiary, CableRep. Indeed, the key differences between buying time through CableRep and leased access are (1) that the latter has greater protection against preemption (paid programming typically is run of schedule (ROS)), (2) that (in most circumstances) the cable system cannot exert editorial control over the leased access programming, and (3) that program time contracts often include cross channel promotion, which obviously impacts the rate charged. All other aspects of the two types of programming are virtually identical. Copies of representative rate cards for the San Diego system (which has approximately 470,000 subscribers) are attached. This demonstrates the below market status of the part-time leased access rates. In light of this evidence, Cox believes that part-time leased access rates should be deregulated and set by the market; short of this, however, cable operators should be permitted to assess a surcharge on part-time leased access rates.

In short, Cox's experience with the Commission's formula over the past three years demonstrates that it does work. Consistent with Congressional intent, numerous programmers, unaffiliated with Cox, are leasing access on our cable systems without financially burdening our operations or their operations. Leasing activity is on the increase, not the decline. The Commission's formula

accurately measures the maximum reasonable rate that a cable system may charge for full-time carriage. As a practical matter, however, it serves mainly as a ceiling under which lower rates often are negotiated depending on the relative value of the leased access programming -- a determination that can only be made in the marketplace by consumers, not by regulators. And, with respect to part-time leased access, the highest implicit fee, when pro-rated, is below the rates for paid programming set by the market.

It is for all of these reasons that Cox supports continued use of the Commission's current formula. Nonetheless, we have suggested in our comments that the Commission could adopt an average channel rate formula for full-time carriage (which would produce rates roughly 25% lower than those calculated under the current approach) if it concludes that some change is necessary. Cox would strongly oppose, however, adjustments which set the ceiling for leased access at less than the average channel rate, since that rate, in our view, represents the absolute lowest fair market value of leasing a channel on our cable systems.

I hope this information is useful to you. Please do not hesitate to call if you have further questions about our leased access activities.

Best regards.

Sincerely,

A handwritten signature in black ink, appearing to read 'Patrick J. Esser', with a large, stylized initial 'P' and 'E'.

Patrick J. Esser
Vice President Advertising Sales

Enclosures

cc: Robin Sangston, Esq.

COX SYSTEM SURVEY OF LEASED ACCESS USE
(as of October 1, 1996)

SYSTEM	# of channels with any leased access programming	# of leased access users (full and part time)	# of non-profit leased access users	Types of leased access programming system is carrying
Cox Communications Cleveland, Inc.	2	1 f/t; 1 p/t	0	24 hr. educational courses and ½ hr weekly religious part time usage
Cox Communications Gainesville, Inc.	1	4 p/t	1	real estate; infomercials; religious; free speech; Sierra Club
Cox Communications Hampton Roads, Inc.	5	3 f/t; 2 p/t	0	educational; home shopping; adult
Cox Communications Humboldt, Inc.	1	1 f/t	1	Religious/classified
Cox Communications Lafayette, Inc.	1	1 p/t	1	Religious programs: church services, bible reading
Cox Communications Myrtle Beach, Inc.	4	3 f/t; 7 p/t	2 p/t	Tourist attractions, golf course programming, local parades & events, restaurant & hotel promotions, religious programming, infomercials
Cox Communications Ocala, Inc.	1	2 p/t	0	Country Christmas; investment
Cox Communications Oklahoma City, Inc.	1	7 p/t	4	Local religious shows; Vietnam Veterans of America show; Local show from Metropolitan Library.
Cox Communications Orange County, Inc.	1	10 p/t	0	children's; infomercials; business news
Cox Communications Pensacola, Inc.	4	3 f/t; 1 p/t	1	Religious, Shopping, Visitor Info., Local programming, Minority programming, video tape sales.
Cox Communications Ft. Walton, Inc.	3	2 f/t; 1p/t	0	Religious, Shopping, Visitor Info., Local programming, Minority programming, video tape sales.
Cox Communications Phoenix, Inc.	1	3 p/t	0	Real estate; infomercials; local programming
Cox Communications San Diego, Inc.	1	1 p/t	0	adult entertainment



CableRep San Diego

INFORMATION

9/6/96

30 MINUTE RATE CARD

Channel 4, 5
Position:

Homes Served: 460,000 Channel 5
478,000 Chl 4 - KCOX

	<u>Channel 5</u>	<u>Channel 4 Multiplex</u>
Daytime 6a-5p	\$350 (Monday - Friday)	\$650
Daytime Sat & Sun 6a-1p 8p-12Mid	\$500 (Saturday - Sunday)	\$900
Early Fringe 5p-7p	\$550	\$650
Prime Access 7p-8p	\$650	\$750
Prime Time 8p-11p Multiplex	\$650	\$900
Late Fringe 11p-12m Multiplex	\$400	\$600
Late Night 12m-2a	\$250	\$350
2a-6a	N/A	N/A

*All rates above are for fixed positions.
Rates are subject to change without notice.*

Multiplex airs on 13 channels simultaneously

- Syndex blackout is subject to change in availability with 48 hours notice. All orders in blackout time subject to cancellation by station due to program changes.
- All programs must be on 3/4" videocassette w/complete audio on Ch. 2 only.
- All programs must have an actual Total Running Time (TRT) = 28:30.
- Sixty-minute avails are twice the 30-minute rate.
- Tapes must arrive at the following location by noon, two working days prior to air date:

Cox San Diego

Attn: Traffic

1175 N. Cuyamaca, El Cajon, CA 92020

The following is an excerpt taken from our San Diego operation's leased access rate card.

**Cox Communications San Diego, Inc.
d/b/a CableRep Advertising**

**LEASED CHANNEL RATE CARD
April 1996 -- December 1996**

Category II and III.

Leased Channel Rate Card (Channel 75 Only) -- Hourly Rates

Hourly Rate Calculation		550 MHz (Channel 75 Only)	Hourly Rate	Minutes	Total (Daypart Cost)
\$145.97 x 50%	A.	6 AM - 3 PM	\$ 73.00	9	\$ 657.00
\$145.97 x 120%	B.	3 PM - 7 PM	\$175.00	4	\$ 700.00
\$145.97 x 250%	C.	7 PM - Midnight	\$365.00	5	\$1,825.00
\$145.97 x 36%	D.	Midnight - 6 AM	\$ 53.00	6	\$ 318.00